

### **REMARKS**

In the Restriction Requirement dated February 06, 2006, the Examiner has restricted the claims to one of the following inventions under 35 U.S.C. 121:

- I. Claims 1-11 and 50-56, drawn to a drainage device and a method of using the device comprising a valve, an intake conduit, and a linear member, classified in class 604, subclass 9.
- II. Claims 12-16, drawn to an implant device with a flange, tubular shaft, and barbs, classified in class 604, subclass 8.
- III. Claims 17-49 and 57-60, drawn to a method and implantable device comprising an intake conduit and a flow controller and a method of controlling flow, classified in class 604, subclass 9.
- IV. Claims 61-68, drawn to a drainage device with an intake conduit, external plate, and flow resistor, classified in class 604, subclass 9.
- V. Claims 69-75, drawn to a flow resistor with a barb, classified in class 604, subclass 30.

Applicant respectfully traverses the restriction requirement and elects Group III (claims 17-49 and 57-60) for purposes of responsiveness. It is respectfully submitted that the subject matter of Groups I, II, III, IV and V could be examined without further burden to the Office.

Reconsideration and regrouping of all claims is respectfully requested. Subject to the Examiner's consideration of this request, Applicant offers to withdraw the claims of Groups I, II, IV and V (claims 1-16, 50-56 and 61-75) without prejudice or disclaimer, and reserves the right to reintroduce them in one or more divisional applications at a later date.

The restriction requirement is traversed, in part, on the basis that restriction requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. In light of this, it is submitted that Applicant should not be required to incur additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject

matter.

The Examiner asserts that the subject matter recited in the claims of Groups I, III and IV are classified in class 604, subclass 9. To the extent that this denotes but a single subclassification, it does not appear burdensome to maintain these claims in a single group for purposes of search and examination.

Furthermore, as to the restriction of Groups I, III and IV, Applicant submits that the Examiner has not met the burden of establishing that each recited subject has formed separate status in the art, as required by M.P.E.P. § 808.02(B) in the case of common classification.

Thus, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

RESPONSE TO RESTRICTION REQUIREMENT

Serial Number: 10/664,409

Filing Date: September 16, 2003

Title: BYPASS FOR GLAUCOMA DRAINAGE DEVICE

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Dkt: 600.592US1

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6911 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

J. DAVID BROWN ET AL.

By their Representatives,

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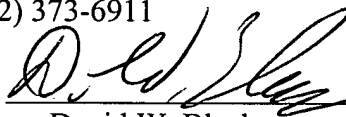
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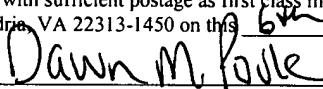


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 6th day of April, 2006.

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